

REMARKS

This Response is submitted in reply to the Office Action mailed on August 19, 2008. Claims 1-44 are currently pending. The Office Action is a restriction and election of species requirement. With respect to the restriction requirement, restriction is required between five alleged groups of invention: Group I (Claims 1-4, 13-21 and 38-42); Group II (Claims 5-8 and 24-28); Group III (Claims 9-12 and 31-35); Group IV (Claims 22, 29, 36 and 43); and Group V (Claims 23, 30, 37 and 44). Applicants elect Group I (Claims 1-4, 13-21 and 38-42). Applicants expressly reserve the right to file one or more divisional applications directed to the non-elected claims.

Applicants also respectfully traverse the Patent Office's assertion that Claim 22 drawn to a transgenic plant is patentably distinct from Group I. Group IV is drawn to a transgenic plant comprising a cell as claimed in Claim 20, which in turn comprises the non-native recombinant DNA construct as claimed in Claim 18. Claim 18 relates to a non-native recombinant DNA construct comprising the polynucleotide of Claim 1. Therefore, the subject-matter of Claim 22 is closely related at least to that of Claims 1, 18 and 20 as components and sub-components. Therefore, Claim 22 should be included in Group I.

Further, the subject-matter of Claim 22 (transgenic plant) cannot be considered as distinct from the subject matter of Claim 20 (cell) because a transgenic plant necessarily comprises the transgenic plant cells that are the subject-matter of Claim 20. In this regard, Applicants respectfully submit that the products of Group I and IV share a special common structural and functional feature because the plant of Group IV is simply formed from a multiplicity of transgenic cells of Claim 20.

Moreover, the search and examination burden on the Examiner will not be increased by the rejoinder of Groups I and IV because the pertinent prior art against Group I should also be pertinent against Group IV. Indeed, Claim 1 is related to a nucleotide sequence encoding a polypeptide having a cysteine protease activity and having over 70% identity with SEQ ID NO: 2. SEQ ID NO: 2 relates to a cysteine protease sequence from *Coffea canephora*, which is a plant.

The Office Action also requires an election of species. In this regard, the Patent Office states that the patent application includes patentably distinct species with distinct amino acid

sequences. Therefore, the Patent Office requires an election of species with respect to the amino acid sequences identified by Seq. ID. Nos. 2 and 16 if Group I is elected.

Applicants do not believe this election of species requirement is proper and traverses same. First, Applicants believe it would unduly limit Applicants' invention to make the election to a single amino acid sequence. Moreover, Applicants respectfully submit that the claimed sequences share related characteristics in accordance with the claimed invention. For example, the claimed amino acid sequences have at least 70% sequence identity to an amino acid sequence of a polypeptide having cysteine proteinase activity based on the ClustalW alignment method.

Applicants also respectfully submit that searching the additional amino acid sequences will not place an undue burden on the Patent Office. For example, the search of the amino acid sequences can be readily performed electronically by the searcher. Finally, Applicants do not believe that this election of species will reduce the burden of examination to the Patent Office. Instead, Applicants will be required to file an individual application directed to each claimed amino acid sequence, which will only result in the Patent Office receiving additional applications directed to subject matter that could have easily been searched along with the elected amino acid sequence in the presently pending application.

In the spirit of responsiveness, Applicants elect as the species, Group A (encompassing Seq. ID No. 2). However, once again, Applicants respectfully request that the election of species requirement be withdrawn.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please reference Atty. Docket No. 112701-667.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No.: 29157
Phone No.: 312-807-4204

Dated: November 19, 2008